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Supreme Court, U.S.
FILED

No. _____

08-336 SEP 9- 2008

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In The

Supreme Court of the United States

AUDRA RENEE HARRISON
and FLOYD YOUNG,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

By Audra Renee Harrison:

1.) Whether the Honorable U.S. District Court has the power to revise the Supreme Courts decision on denying defendants right to jury trial?

2.) Whether the Honorable U.S. District Court erred by ruling the extinguishments period of Texas statute was extended to ten years and one property was seized after ten years statute of limitations.

3.) Whether U.S. District Court erred by refusing answer to motion sent certified mail violates defendants constitutional rights? IRS liquidation process for conducting sale of properties seized clearly states, it must be conducted by private auctioneers. Does Mary Hillard Justice have an auctioneer's license? Does Revenue Officer James Ashton have auctioneers license on whom is IRS agent conducting the sale is violations of IRS guidelines.

By Floyd Young:

4.) Whether Honorable U.S. District Court abused the courts power by dismissing Petitioner's Attorney during argument on properties I own.

5.) Does Texas Uniform Fraudulent transfer act ("TUFA") Tex. Bus. & Com. Code § 24.10 4 years statute applies.

6.) Whether the right for Jury trial under 7th Amendment of U.S. Constitution applies?

QUESTIONS PRESENTED FOR REVIEW – Continued

7.) Under Fraudulent transfer of interest a jury trial is appropriate?
Johnson v. Crook, 93 S.W.3d 263, 273 (Tex.App.-Houston [14th Dist.] 2002, Pet. Denied.); *Coleman Cattle Com. v. Carpentier*, 10 S.W.3d 430, 433-34 (Tex.App.-Beaumont 2000, no pet.)

8.) Whether the Honorable U.S. District Court's dismissal of my attorney from trial for doctor check up on Feb. 12, 2007 on page 233 of transcript will prove a violation of my rights. On Feb. 20, 2007 on page 337 and 368, the same excuse to be dismissed from court proceeding for reason he has another court appearance. Transcript clearly shows I was left without representation.

PARTIES TO THE PROCEEDING

Arthur Ray Harrison (filing separate petition)
Audra Renee Harrison, Petitioner
Floyd Young, Petitioner

United States of America, IRS, Respondent

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CITATIONS OF REPORTS OF OPINIONS ENTERED IN THE CASE

Fifth Circuit Panel Order Affirming Order of the U.S. District Court.

JURISDICTION

This Honorable Court has jurisdiction to issue extraordinary writs under 28 U.S.C. § 1254(a) and U.S. Supreme Court Rule 20 (especially) "except in certain narrowly defined circumstances" where extreme violations have occurred.

CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

Constitution of the United States of America, First Amendment right to Petition the Government for redress of grievances clause and Due Process Right Clause of the Fifth Amendment and trial by jury under the Seventh Amendment.

STATEMENT OF FACTS

Petitioner Audra Harrison was incorporated in this suit by refusing to falsely testify against Arthur Harrison and turn over properties purchased with my funds to IRS.

No properties questioned in this suit were ever entitled to Arthur Harrison. The Honorable U.S. District Court and 5th Circuit upheld the Motion for jury trial denied on June 20, 2006, in U.S. District Court.

Petitioner Audra Harrison is current on all years of income taxes and committed no fraud. Petitioner Audra Harrison, a high school Salutatorian 1995, received over $10,000.00 from accomplishments and accident in 1995 received another $8,000.00 was not allowed to describe by U.S. District Court likely use of money to purchase property. On November 9, 2007, defendants requested for appointment of counsel received nonresponse from 5th Circuit.

Floyd Young properties were sold to satisfy a debt of Arthur Ray Harrison. These properties were purchased with my funds by a certified cashiers check from my bank. Floyd Young operated a used Auto Dealership from 1998 to 2007, and filed income taxes on DBA, A & A Auto Rentals and Sales.

Petitioners were cooperating in civil suit when IRS's agent James Ashton as to conspiracy with IRS complaint that Arthur Ray Harrison owned the properties. Petitioner Floyd Young controlled this business along with another business venture of his, Floyd's Auto Repair.

On trial date Feb. 12, 2007 to Feb. 21, 2007 there were many violations that occurred within my civil rights.

Feb. 13, 2007 the U.S. District Court approved without my consent a dismissal of my attorney to be absent to go to the doctor, while the witness was called on. In his absence I was called on to testify against defendant and properties of all defendants. Feb. 20, 2007 the same dismissal of my attorney occurred, leaving my properties with no defense to object to dismissal because bias court proceeding that I witnessed. Two (2) days of testimony with no rebuttal harmed any chance I had on sustaining in this trial. My civil and Constitutional rights were violated. The Court's tra script will prove these actions existed.

U.S. District Co rt labeled my testimony not creditable. On trial I could only speak on my prior conviction some 16 years ago.

I could not speak on my confessions from convicted felons to a reformed minister. I was not at liberty to speak on my behalf, a transition to doctrine of Holy Spirits and a Licensed Minister and reformed U.S. citizen. The judge ruled on credibility on my past bad decisions, instead of a reformed citizen.

My Constitutional and civil rights was clearly violated. My properties were not contested in court. The judge excused my attorney on trial dates of Feb. 13, and Feb. 20, 2007 on dates that untruthful testimonies were heard.

STATEMENT OF ISSUES

1. Whether U.S. District Court has the right to strike down the rights of Seventh Amendments of U.S. Constitution of Civil Procedure under Rules 38 and 39.

2. On June 20, 2006, U.S. District Court denied defendants trial by jury. A trial by juries the defendants wishes to obtain its possession and enjoyment; and in a contest over the title both parties has a constitutional right to trial by jury. *GranFinanciera v. Nordberg*, 492 U.S. 33, at 46 n.5 (1989), quoting *Whitehead v. Shattuck*, 138 U.S. 146, at 151 (1891). The questions of defendant's title to real properties remain a factual issue, which may be determined by a jury trial.

3. Under fraudulent transfers of interest in these properties is appropriate for jury determination. *Johnston v. Crook*, 93 S.W.3d 263, 273 (Tex.App. – Houston (E14th Dist.) 2002, pet. denied); *Coleman Cattle Co. v. Carpentier*, 10 S.W.3d 430, 433-34 (Tex.App. – Beaumont 2000, no pet.). The plaintiff's complaint alleges fraudulent transfers and fraudulent concealment against properties of Audra Harrison. The defendants have the right to have issue determined by jury. A fraudulent intent must be affirmatively shown and will not presume. *Sterquell v. Scott*, ___ S.W.3d ___ (Tex.App. – Amarillo 2004, N.P.H.) (No. 07-01-0191-CV; 7-23-04). Plaintiff in its motion, cites *Damsky v. Zavatt*, 289 F.2d 46 (2nd Cir. 1961). As authority for denying a right to jury trial, the Supreme Court questioned that ruling in 1989.

4. U.S. District Court findings and conclusions of law under Texas Uniform Fraudulent Act, Texas Business and Commerce Code, § 24.001. Defendants never transferred any of properties in this suit. The 503 E. 24th Street property was purchased in 1995, which clearly is out of the ten-year statute of limitations. The property purchased August of 1995 and suit against Arthur Harrison was in October 2005 on which no transfer occurred.

5. Whether U.S. District Court obligation is answer motion filed by defendants was ignored on October 24, 2007; December 7, 2007; and December 10, 2007. Defendants challenged IRS disbursement of funds from foreclosure sale, notification of sale, proceeds and missing properties that seized from defendants a nonresponse from U.S. District Court violates defendants civil and constitutional rights.

6. On November 13, 2007, defendants filed petition with 5th Circuit in form Writ of Mandamus. 5th Circuit returned filing fees of $455.00. On October 24, 2007, U.S. District Court denial violates petitioner's rights.

7. Whether U.S. District Court erred by ruling that extinguishments period of Texas Fraudulent Act did not apply.

8. Whether Honorable U.S. District Court excusing of my attorney from court proceedings, violated my Constitutional and civil rights.

9. To judge my credibility on past, is a violation of my civil rights.

STATEMENT OF RELIEF SOUGHT BY PETITIONERS

Statement of relief sought by petitioners on reversal of U.S. District Court and Fifth Circuit Court ruling.

REASON WHY THE WRIT SHOULD ISSUE

Honorable U.S. District Court erred in ruling of the extinguishments period of Texas Fraudulent Transfer Act did not apply. Appellant's motion of four years statute applies under Texas Fraudulent Transfer Act, Ch. 24, of Texas Business and Commerce Code applies and the actions of United States to enforce on its liens must be vacated. U.S. District Court extended statute of limitations on 503 E. 24th Street in Bryan, Texas, to 11 years. Refusing to give petitioners a trial by jury under Seventh Amendment.

Petitioner argues that 4 year statute applies under Section of the Texas Fraudulent Transfer Act, Ch.24, Texas Business and Commerce Code. Applied to United States to enforce and foreclose on its liens must be general principles that State Statute of Limitations does not bind United States.

My properties were sold to satisfy a debt of Arthur Harrison. Honorable U.S. District Court refused to answer petitioner's motions on Oct. 24, 2007 and Dec. 10, 2007. Over 59 vehicles were seized from my business and only 15 crossed the auction

block. All my tools and furniture were seized, only to be given away by Liquidation Specialist Mary Hillard Justice.

U.S. District Court refused to answer my plea, gave IRS the power to act above the law that U.S. Congress has created. *Philadelphia & Reading Corp. v. U.S.*, 944 F.2d 1063 (3d Cir. 1991).

The commissioner is bound by law, to the terms of Internal Revenue code, which truly violated the liquidation process on seizure and sales of properties. IRS Liquidation process states IRS must hire a private auctioneer to conduct the sale. IRS Agent needs to prove they were licensed to auction the properties, which could make this sale void.

CONCLUSION

The Petition for Writ of Certiorari challenges the Honorable U.S. District Court and 5th Circuit Court of Appeals orders must be vacated.

The Honorable U.S. District Court must follow rules of Supreme Court and Congress. The Honorable U.S. District Court obligations to rule on defendant's motions. The U.S. District Court erred by letting IRS violate their own liquidation process on foreclosure and distribution of funds. The Honorable U.S. District Court ruled on properties on credibility. A Salutatorian with Master Degree with no previous convictions has no credibility is an understatement.

The petitioners' Petition for Writ of Certiorari must be granted from the decision of Honorable U.S. District Court and 5th Circuit Court of Appeals disregarded the rules of Supreme Court and the U.S. Constitution. The lower Court's decision, not in interest of the law must be vacated and reversed.

The petitioners do not have money or proper education to prepare Writ of Certiorari. The petitioners seek to stand on God's word "that no weapon that is formed against thee shall prosper."

Therefore, petitioners pray Almighty God and Honorable Supreme Court to judge my credibility on my accomplishments and grant a Writ of Certiorari in name of Justice.

We humbly submit,

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IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 07-20363
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ARTHUR R. HARRISON; FLOYD YOUNG; AUDRA RENEE HARRISON

Defendants-Appellants

Appeals from the United States District Court
for the Southern District of Texas
USDC No. H-05-3507

(Filed Apr. 8, 2008)

Before STEWART, OWEN and SOUTHWICK, Circuit Judges.

PER CURIAM:*

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

On appeal, Arthur R. Harrison disputes the district court's assessment of his outstanding federal income tax liability. Both Harrison and his adult daughter, Audra Renee Harrison, challenge the court's determination that Arthur Harrison fraudulently transferred or concealed certain real and personal property by nominally titling the property in the name of either Floyd Young or of Harrison's daughter, Audra.[1] Harrison's daughter also asserts that she was entitled to a jury trial on issues related to the ownership of the disputed property. However, the government's suit against Harrison was one to enforce tax liens and set aside fraudulent conveyances. There is no right to a jury trial in an equitable action to enforce a tax lien. *Federal Deposit Ins. Corp. v. New London Enterprises, Ltd.*, 619 F.2d 1099, 1103 (5th Cir. 1980). Ms. Harrison argues that she has the right to a jury trial independent of any rights that Harrison may have. This argument is without merit. The government is not asserting an independent action against Ms. Harrison. She was named as a defendant in the suit as the record owner of the property. The government's sole claim is against Harrison for fraudulent conveyance, and this Court has made it clear that there is no right to a jury trial

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[1] The court's determination that Harrison was the true owner of the property meant that the property was subject to foreclosure and sale to satisfy Harrison's outstanding tax liability.

in such a case. *Duncan v. First Nat'l Bank,* 597 F.2d 51, 56 (5th Cir. 1979).

The district court entered Findings of Fact and Conclusions of Law after a seven-day bench trial in which the court heard testimony from sixteen witnesses. We have reviewed the court's detailed findings and the record in this case, and have considered the briefs of the parties. We are satisfied the district court committed no reversible error. Therefore, we affirm the district court's judgment for the same reasons set out in the Findings of Fact and Conclusions of Law dated March 13, 2007. All outstanding motions are DENIED.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ARTHUR RAY HARRISON, *et al.*, Defendants.	§ § § § § § § §	CIVIL ACTION NO. H-05-3507
IN RE: ARTHUR R. HARRISON, Debtor	§ § § §	BANKRUPTCY CASE NO. 04-46820
UNITED STATES OF AMERICA (INTERNAL REVENUE SERVICE), Plaintiff, v. ARTHUR R. HARRISON, Debtor/Defendant.	§ § § § § § § §	ADV. NO. 06-3276

FINAL JUDGMENT

Based on the Findings of Fact and Conclusions of Law issued this day, the Court enters Final Judgment as follows:

As of September 1, 2006, Arthur Harrison owed the Internal Revenue Service ("IRS") **$217,966.63** (including interest and penalties for his unpaid 1990, 1991, 1993, 1995, and 1996 income taxes.

Harrison is the true owner of the real property located at 2536 Pinon Court, 307 N. Texas Avenue, 1107 S. Texas Avenue, 503 East 24th Street, and 1095 N. Earl Rudder Freeway. Harrison is the sole owner of A&A Auto Rentals and Sales and variations of that name, a 1999 Cadillac Escalade, a 1987 MCI bus, and a 1984 GMC bus. The United States is entitled to sell this property, subject to Lillie Harris Harrison's homestead interest and any unpaid *ad valorem* taxes owed to Brazos County, to satisfy Harrison's outstanding federal income tax liability.

Pursuant to 11 U.S.C. § 523(a)(1)(C), Arthur Harrison's tax liability was not properly discharged in Mr. Harrison's bankruptcy. Pursuant to 11 U.S.C. § 727(d), Harrison's discharge in bankruptcy is revoked.

This is a final, appealable Judgment.

SIGNED at Houston, Texas, this 13th day of **March, 2007**.

/s/ Nancy F. Atlas
Nancy F. Atlas
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ARTHUR RAY HARRISON, *et al.*, Defendants.	§ § § § § § § § §	CIVIL ACTION NO. H-05-3507
IN RE: ARTHUR R. HARRISON, Debtor	§ § §	BANKRUPTCY CASE NO. 04-46820
UNITED STATES OF AMERICA (INTERNAL REVENUE SERVICE), Plaintiff, v. ARTHUR R. HARRISON, Debtor/Defendant.	§ § § § § § § § §	ADV. NO. 06-3276

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff United States of America filed this civil lawsuit and the bankruptcy adversary proceeding seeking to recover unpaid income taxes owed by Defendant Arthur Harrison ("Harrison"). Plaintiff

seeks to foreclose on property either owned by Harrison in his own name or held in the name of an individual whom Plaintiff contends is Harrison's nominee. The United States also seeks the revocation of Harrison's discharge in his Chapter 7 bankruptcy proceeding, and a finding that Harrison is in contempt of Court orders previously issued in this case.

The case was tried to the Court beginning February 12, 2007. Having heard and observed the witnesses, and having reviewed all matters of record in this case, the Court makes the following findings of fact and conclusions of law.[1]

I. GOVERNING LEGAL PRINCIPLES

A. Texas Uniform Fraudulent Transfers Act

The United States argues that Harrison fraudulently transferred and/or concealed assets in which he has an interest. The United States, therefore, seeks to foreclose on those assets to satisfy Harrison's income tax liability.

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[1] The Court explains the evidence and uses various forms of the word "find" to indicate a finding of fact, and sets forth legal principles and uses forms of the words "hold" and "conclude" to indicate a conclusion of law. To the extent a finding of fact is more properly a conclusion of law, and to the extent a conclusion of law is more properly a finding of fact, it should be so construed.

The Texas Uniform Fraudulent Transfers Act ("Texas UFTA"), Texas Business and Commerce Code § 24.005, provides that:

> A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or within a reasonable time after the transfer was made or obligation was incurred, if the debtor made the transfer or incurred the obligation: . . . (1) with actual intent to hinder, delay, or defraud any creditor or debtor.

TEX. BUS. & COM. CODE § 24.005(a)(1). The intent to hinder, delay or defraud are three separate elements any one of which will support a finding of fraud. *See In re Brentwood Lexford Partners, L.L.C.,* 292 B.R. 255, 262 (Bankr. N.D. Tex. 2003). The intent to "delay or defraud may be established by circumstantial evidence." *Id.* at 263 (citing *In re Reed,* 700 F.2d 986, 991 (5th Cir. 1983)). The Texas UFTA has a non-exhaustive list of "badges of fraud," which may be used by courts to determine intent to hinder, delay or defraud. *See In re Hinsley,* 201 F.3d 638, 643 (5th Cir. 2000). These badges of fraud include, but are not limited to: (1) the transfer or obligation was to an insider; (2) the debtor retained possession or control of the property transferred; and (3) the transfer or the asset was concealed. *See* TEX. BUS. & COM. CODE § 24.005(b). Fraudulent intent is presumed "when property is either transferred gratuitously or is transferred to relatives." *Pavy v. Chastant (Matter of Chastant),* 873 F.2d 89 (5th Cir. 1989).

B. Revocation of Bankruptcy Discharge

The United States argues that Harrison obtained a discharge in bankruptcy that should be revoked under 11 U.S.C. § 727. The United States argues that Harrison obtained the discharge through fraud and that Harrison failed to comply with the requirements of the Bankruptcy Code.

Under § 727(d) of the Bankruptcy Code, a creditor can request the revocation of a discharge based on any one of the following:

> (1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;
>
> (2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee;
>
> (3) the debtor committed an act specified in subsection (a)(6) of this section [refused to testify, or failed to obey a court's order]; or
>
> (4) the debtor has failed to explain satisfactorily –
>
> (A) a material misstatement in an audit referred to in section 586(f) of title 28; or

> (B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.

11 U.S.C. § 727(d). Additionally, a discharge may be revoked under § 727 if a debtor fails to comply with the requirements of the code. *See United States v. Cluck,* 87 F.3d 139, 140 (5th Cir. 1996) (upholding the Bankruptcy Court's revocation of the defendant's discharge because he failed to disclose property and assets, made false statements in his bankruptcy schedules, fraudulently transferred property, and repeatedly disregarded court orders).

A "party attempting to revoke a debtor's discharge under 727(d)(1) must show 1) the discharge was obtained through fraud of the debtor, 2) the party requesting the revocation did not know of the debtor's fraud until after the discharge was granted, and 3) grounds exist which would have prevented the debtor's discharge had they been known." *In re Landry,* 350 B.R. 51, 56 (Bkrtcy. E.D. La. 2006).

C. Motions for Contempt

The United States filed two motions [Doc. # 138 and Doc. # 145] seeking an order holding Harrison in contempt for contacting two witnesses in the case. Since the United States seeks compensation for

Harrison's conduct, the contempt would be civil in nature. *See Matter of Terrebonne Fuel and Lube, Inc.*, 108 F.3d 609, 612 (5th Cir. 1997).

II. FINDINGS OF FACT

As the trier of fact in this case, the Court evaluated the witnesses' credibility. The Court finds many, if not most, of Defendants' witnesses' testimony was in significant respects unworthy of belief. In particular, Harrison, Sharonda Lashea Harris, Audra Harrison, and Floyd Young gave testimony that was contradictory, internally inconsistent, and on occasion bizarre. For example, Harrison testified through racking sobs that his wife Lillie Harrison was emotionally scarred because Internal Revenue Service ("IRS") Agent James Ashton peeped at her through a window at her home while he was trying to serve a deposition subpoena.[2] Ashton ***and Mrs. Harrison*** both testified, however, that Ashton did not peep in Mrs. Harrison's window.

Based on the Court's evaluation of witness credibility, the Court makes the following findings of fact.

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[2] Harrison's attorney sent a letter to the IRS demanding a million dollars for the Harrisons' damages caused by the IRS's attempts to serve subpoenas in this case.

A. Parties and Disputed Properties

Plaintiff is the United States of America, and the specific agency involved in the IRS.

Defendant Arthur Ray Harrison is the relevant taxpayer. Defendant Floyd Young is Harrison's friend and previously worked for Harrison as a mechanic. Defendant Audra Renee Harrison ("Audra Harrison") is Harrison's adult daughter. Defendant Lillie Harris Harrison is Harrison's wife. Defendant Brazos County is a local taxing authority to which property taxes are owed on certain of the disputed properties. All Defendants reside or are located in the Southern District of Texas.

The disputed properties include real property located in Bryan, Texas, at 2536 Pinon Court, 307 N. Texas Avenue, 1107 S. Texas Avenue, 503 East 24th Street, and 1095 N. Earl Rudder Freeway.[3] The disputed properties also include a business known as A & A Auto Rentals and Sales and variations of that name, as well as three vehicles – a 1999 Cadillac Escalade, a 1987 MCI bus, and a 1984 GMC bus.

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[3] The United States also disputes Audra Harrison's title to 901 Harlem Lane, but does not include the property as part of this lawsuit because of its very low tax-assessed value.

B. Harrison's Income Tax Liability and Liens

On the dates indicated in the following chart, a delegate of the Secretary of the Treasury made assessments and gave notice and demand against Harrison for his federal unpaid income taxes, penalties, and interest in the amounts and for the tax years shown:

Tax Year	Unpaid Balance	Assessment Date	Date Tax Lien Filed
1990	$56,574.25	03/24/1997	07/28/1997
1991	$28,439.22	03/24/1997	07/28/1997
1993	$ 3,122.49	10/28/1996	07/28/1997
1995	$11,358.59	02/17/1997	07/28/1997
1996	$55,407.94	10/20/1997	11/17/1997

Despite notice and demand, Harrison has not paid his income taxes. As of September 1, 2006, Harrison owed the IRS $217,966.63 (including interest and penalties) for his unpaid 1990, 1991, 1993, 1995, and 1996 income taxes.[4]

On February 11, 1997, Harrison entered into an agreed Decision in his United States Tax Court case stipulating to tax deficiencies for his 1990 and 1991 income taxes.

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[4] On November 7, 2006, the Court entered a partial summary judgment ruling to this effect.

On July 28, 1997, the United States filed federal tax liens against Harrison in the real and personal property records of Brazos County, Texas for his unpaid income taxes for tax years 1990, 1991, 1993, and 1995. On November 17, 1997, the United States filed a federal tax lien against Harrison in the real property records of Brazos County, Texas for his unpaid income tax for the 1996 tax year.

On September 17, 2004, the IRS filed a nominee lien against Floyd Young as nominee, alter-ego and/or transferee of Arthur R. Harrison, which lien encumbers the property at 1101 S. Texas Avenue in Bryan, Texas. On that same day, the IRS filed a nominee lien against A & A Auto Sales and A & A Auto Sales & Rentals, as nominees, alter egos, and/or transferees of Arthur R. Harrison, which lien also encumbers the business A & A Auto Rentals and Sales. On September 24, 2004, the IRS filed a nominee lien against Floyd Young as nominee, alter/ego and/or transferee of Arthur R. Harrison, which lien encumbers the 307 N. Texas property.

C. Analysis Regarding Disputed Properties

1. 2536 Pinon Court

By warranty deed recorded November 19, 1991, Harrison acquired real property located at 2536 Pinon Court in Bryan, Brazos County, Texas, with the following legal description:

> Being all that certain lot, tract or parcel of land lying and being situated in Brazos

> County, Texas, and being Lot TWO (2), Block TWO (2), ALLEN RIDGE PHASE ONE, an addition in the City of Bryan, Brazos County, Texas, as shown on plat recorded in Volume 373, Page 469, Official Records of Brazos County, Texas.

Harrison's homestead is located on this property. According to the Brazos County real property records, Harrison is the fee simple owner of his homestead, but his wife, Lillie Harrison, has a homestead interest in the property. The parties have stipulated that Mrs. Harrison's homestead interest in this property is 51.138% and Mr. Harrison's homestead interest in the property is 48.863%. The IRS is entitled to foreclose its interest in this property, and these percentages will be applied to the sales price after payment of all expenses of sale and any unpaid *ad valorem* taxes owed to the County of Brazos.

2. 307 N. Texas Avenue

On or about February 21, 1997, Harrison acquired by special warranty deed from Raymond Lehman certain commercial real property located at 307 N. Texas Avenue in Bryan, Brazos County, Texas, having the following legal description:

> All that certain lot, tract or parcel of land lying and being situated in Brazos County, Texas, and being Lot Six-R (6-R), Block Forty-Three (43), City of Bryan, an addition to the City of Bryan, Brazos County, Texas, according to a vacating and resubdivision

> plat of Lot 6 and 38' of Lot 7, Block 43, Original Townsite of Bryan, the plat recorded in Volume 810, Page 745 of the Official Records of Brazos County, Texas.

The United States' statutory tax lien against this property pursuant to 26 U.S.C. § 6321 arose on the day the IRS assessed the unpaid taxes in October 1996, February 1997, and March 1997.

On or about April 14, 1997, after the IRS made federal income tax assessments against Harrison for his 1990, 1991, and 1993 income tax and after the statutory liens attached to the property, Harrison conveyed to Floyd Young a life estate in the real property at 307 N. Texas Avenue in Bryan, Texas.[5] Young, a convicted felon[6] and Harrison's mechanic, claims to have paid approximately $40,000.00 for the life estate. Young claims to have borrowed the money in cash from Robert Polk,[7] but there are no records to support the existence of the loan. Young testified during his deposition in this lawsuit that he put the

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[5] Young at trial claimed that he purchased the fee ownership of the property. There are no documents that support this claim.

[6] Young testified at trial that he asked Harrison to purchase the property in Harrison's name because, as a convicted felon, Young anticipated difficulties obtaining an automobile dealer's license.

[7] An individual named Gloria Polk Davenport testified at trial that *she* loaned over $40,000.00 to *Harrison*, but there is no credible evidence of a $40,000.00 loan from Robert Polk to Floyd Young.

money in a safe, stating unequivocally that he did not put it under his mattress. He testified to the contrary at trial, stating that he put the cash under his mattress.

On October 20, 1999, more than two years after Harrison claims to have transferred a life estate in the property to Young, a final decree of divorce was entered in the 21st Judicial District Court of Burleson County, Texas, in *The Matter of the Marriage of Katherine Harrison and Arthur Ray Harrison,* Case No. 21,860. In the divorce decree, Harrison personally was awarded the real property located at 307 N. Texas Avenue in Bryan, Brazos County, Texas.

In his 2004 income tax return, filed in May 2006, Harrison listed 307 N. Texas Avenue as his home address.

Harrison operated and continues to operate an automobile rental and sales business on the property at 307 N. Texas Avenue. Young does not work at this business, but works at his own business, Floyd's Auto Repair, located at 908 Turkey Creek in Bryan. Young has not used his life estate in the 307 N. Texas Avenue property. The transfer of a life estate to Young was fraudulent, and Harrison is the true owner of the 307 N. Texas Avenue property. As a result, the IRS is entitled to sell the property to satisfy Harrison's outstanding federal income tax liability.

3. 1101 S. Texas Avenue

On or about June 30, 2000, Harrison acquired by warranty deed a remainder interest in commercial real property located at 1101 S. Texas Avenue in Bryan, Texas, having the following legal description:

> Surface estate only of all that certain tract or parcel of land lying and being situated in Brazos County, Texas, and being Lots Nos. 1 and 2, Winter's Addition, City of Bryan, Brazos County, Texas, according to plant in Volume M, Page 40 1/2 Civil Minutes District Court of Brazos County, Texas.

Simultaneously, Floyd Young purportedly acquired a life estate in this property. Young has produced an $80,000.00 cashier's check that was used to purchase the property. He claims the source of these funds was the profits from the business at the 307 N. Texas location, but no records support Young's claim that 307 N. Texas Avenue ever generated sufficient income to provide Young the $80,000.00 purchase price for the 1101 S. Texas Avenue property. This explanation, in addition to being incredible in light of other evidence pertaining to the business, is inconsistent with Young's deposition, in which he testified that he borrowed the $80,000.00 from Polk, the same person from whom he claims to have borrowed the $40,000.00 in cash to purchase what turned out to be a purported life estate in 307 N. Texas Avenue.

Young admits that he did not negotiate the purchase of 1101 S. Texas Avenue, he does not remember

the name of anyone involved in the transaction, and he did not attend the closing.

Young has not used the 1101 S. Texas Avenue property. Instead, Harrison used and uses this property in connection with his businesses, specifically housing buses there that he uses for casino trips and other travel services.

Also on June 30, 2000, Harrison executed an "Option Contract for Purchase of Real Estate" giving Harrison the option to buy Young's life estate in the 1101 S. Texas Avenue property.

Richard Rosas, a realtor in Bryan, testified at trial that it was his understanding that Harrison owns the two properties on Texas Avenue.

Young's purported life estate is fraudulent. Harrison is the true owner of the property at 1101 S. Texas Avenue, which is subject to sale by the IRS to satisfy Harrison's unpaid federal income taxes.

4. A & A Auto Rentals and Sales

Harrison and Young assert that Young owns A & A Auto Rentals and Sales and that Harrison manages the business for Young. Young believes he has an assumed name document, but he was not sure when he testified at trial and he had not produced one during discovery. Young stated that he paid Harrison $2,000.00 for the stock in A & A Auto Rentals and Sales, yet the business is not incorporated and has no stock.

Harrison claims he is not paid by A & A Auto Rentals and Sales, although he operates it as his own business. Indeed, in his Schedule I in the bankruptcy case he identified himself as "self-employed" in the car rental business, which is consistent with his ownership of A & A Auto Rentals and Sales.

In the final divorce decree in *The Matter of the Marriage of Katherine Harrison and Arthur Ray Harrison* referenced above, Harrison was awarded the business known as A & A Auto Rentals and Sales, a sole proprietorship, as well as all furniture, fixtures, machinery, equipment, inventory, cash, receivables, accounts, goods, supplies, and all personal property used in connection with the operation of this business.

Roxie Miller, Harrison's employee for a brief time in June 2004, testified at trial that Harrison told her that he and Young owned the business together, but that she saw no indication Young was involved in A & A Rentals and Sales. She never saw Young and never received any instructions from him. She was not aware of anyone other than Harrison making decisions or otherwise controlling the business. Instead, Harrison hired her, paid her, set her hours, and opened and closed the office each day. Miller testified that the bills at A & A Auto Rentals and Sales were in Harrison's name and Harrison paid them.[8] Miller

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[8] Generally, Harrison would write the checks for A & A Auto Rentals and Sales and have Young sign them.

testified that Harrison told her not to talk to an IRS agent if he came to the A & A Auto Rental and Sales office where Miller worked. The Court finds Miller's testimony to be credible.

Twila Dawn Adams also testified at trial. Adams worked for Harrison briefly in early 2006 at both the 307 N. Texas Avenue and the 1101 S. Texas Avenue locations. She knew of Young only as a mechanic. Adams testified that Harrison told her not to speak with the IRS.

Richard Rosas, a realtor and long-time resident of the Bryan area, testified at trial that Harrison's primary business is A & A Auto Rentals and Sales.

Burlington Insurance Company issued a sizeable insurance policy to Arthur Harrison d/b/a A & A Auto Rentals and Sales, 307 N. Texas Avenue, and Harrison claimed the insurance expense on his income tax returns.

Harrison and A & A Auto Rentals and Sales were named defendants in a lawsuit in Brazos County filed by Joseph Swonke regarding an accident involving "A & A's Tow Truck." Harrison filed a counterclaim against Swonke alleging "damage to ***my*** vehicle" (emphasis added).

Young, a convicted drug dealer, admitted at trial that he had no familiarity with the automobile business when he allegedly bought it.[9] Young also admitted that he has never advised Harrison about how to operate the business. Harrison testified at trial that he gives Young sales reports regarding the A & A Auto Rentals and Sales vehicles, but neither he nor Young produced even one such report. Young testified at trial that he had more than $20,000.00 in income from A & A Auto Rentals and Sales in 2005, but he did not report any such income on his tax return.

The business operated as A & A Auto Rentals and Sales and numerous variations of that name, including "A & A Auto Sales" and "A & A Auto Rentals," is a sole proprietorship owned by Harrison. As a result, its assets are subject to sale by the IRS to satisfy Harrison's tax liability.

5. 503 East 24th Street

Audra Harrison is the record owner of commercial real property located at 503 E. 24th Street in Bryan, Texas, and having the following legal description: "Lots 6 and 7, Block 52, Pt. 8, City of Bryan, Brazos County, Texas."[10] Richard Rosas, the real

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[9] Young stated that he has bought vehicles at auction, but he gave no specifics. The Court does not credit Young's testimony.

[10] The 503 E. 24th Street property is located behind the 307 N. Texas Avenue property.

estate agent who handled the purchase of the property, dealt only with Harrison, but Audra Harrison attended the closing. Audra Harrison was approximately 18 years old and had just graduated from high school.

Harrison paid the $1,000.00 down payment for the $20,000.00 purchase of the property in Audra Harrison's name in 1995. Harrison signed Audra Harrison's name to the earnest money contract and most of the other purchase documents.[11] During the course of this lawsuit, Audra Harrison has given materially inconsistent statements regarding the source of the funds she allegedly used to purchase the property. The Court is unpersuaded that she has any accurate recollection of the acquisition of this property. The alleged sources of the funds, including high school graduation gifts, college scholarships, and money from her grandmother, were not realistically sufficient to supply the $19,000.00 balance for the purchase of the property. Nor is it credible that Audra Harrison spent her limited funds on real estate for speculation or her father's business use, given her other financial needs at the time. She required college scholarships and student loans, and she worked thirty (30) hours per week while in college.

Since 1995, Harrison has been the primary user of the 24th Street property in connection with his business operated as A & A Auto Rentals and Sales.

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[11] Audra Harrison signed the Settlement Statement.

Harrison paid for business insurance on the property. Audra Harrison has neither used the property nor charged Harrison for its use.

Audra Harrison obtained student loans, but did not list the 503 E. 24th Street property as an asset on her applications.

In March 2001, Audra Harrison submitted a residential loan application to Countrywide Home Loans, Inc. for the $48,000.00 purchase of a condominium. In the loan application, she did not list the 24th Street property as belonging to her and answered "no" to the question of whether she owned other real estate.

Roxie Miller testified at trial that Harrison told her that he owned the 24th Street property but had it in his daughter's name so he would not have to pay the IRS. Although Miller worked for Harrison only a couple of weeks, the Court finds her to be a credible witness.

On September 12, 2005, Harrison filed a lawsuit in Brazos County claiming to be the "owner/landlord" of the 24th Street property. On September 26, 2005, Harrison obtained a judgment of eviction, recovering possession of the 24th Street property.[12]

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[12] Audra Harrison testified at trial that she was unaware anyone had lived on the property.

In June 29, 2006, Audra Harrison obtained a divorce from Marcus Smith. She did not list the 24th Street property as her asset in the divorce.

Audra Harrison, although listed as the record owner of the 24th Street property, holds the property as a nominee for Harrison, the true owner of the property. As a result, the property is subject to sale to satisfy Harrison's federal income tax liability.

6. 1095 N. Earl Rudder Freeway

Audra Harrison is the record owner of five acres of commercial real property located at 1095 N. Earl Rudder Freeway in Bryan, Texas, having the following legal description: "John Austin, Block 15, Lot 5, TR-266, 5.45 acres, Brazos County, Bryan, Texas." The property was purchased for $11,050.00 at a Sheriff's sale in January 2004. Harrison signed Audra Harrison's name to the bid information sheet. Audra Harrison attended the sheriff's sale, but was unsure how much was paid for the property.[13] Audra Harrison testified at trial that, after she paid her living expenses in 2003, she still had approximately $1,000-$1,200 remaining each month. Prior to 2003, Audra Harrison did not have sufficient income to have saved sufficient sums to purchase this property. Also, the Court finds that Audra Harrison, given her preoccupation with the possibility that a family

[13] When she appeared for deposition initially, Audra Harrison failed to bring any documents concerning the property.

member may need her financial assistance, would not have used what was likely her entire savings as of January 2004 to purchase the Earl Rudder Freeway property – undeveloped land.

Audra Harrison did not list the Earl Rudder Freeway property as an asset in her 2006 divorce proceeding.

Realtor Richard Rosas testified at trial that he recently contacted Harrison about selling the Earl Rudder Freeway property. Rosas testified that he has never discussed the potential sale with Audra Harrison.

Audra Harrison, although listed as the record owner of the 1095 N. Earl Rudder Freeway property, holds the property as a nominee for Harrison, the true owner of the property. As a result, the property is subject to sale to satisfy Harrison's federal income tax liability.

7. 1999 Cadillac Escalade

Audra Harrison holds title to a 1999 Cadillac Escalade that was previously titled to A & A Auto Rentals and Sales. Harrison uses the Cadillac Escalade and pays the insurance on it. Audra Harrison did not list the Cadillac Escalade in her 2006 divorce proceeding.

Audra Harrison holds title to the 1999 Cadillac Escalade as a nominee for Harrison, its true owner.

As a result, the vehicle is subject to sale to satisfy Harrison's federal income tax liability.

8. 1987 MCI Bus/1984 GMC Bus

Audra Harrison holds title to a 1987 MCI bus and a 1984 GMC bus that were owned by A & A Auto Rentals and Sales until title was transferred to Audra Harrison. She claims that she purchased the MCI bus in December 2004 because she and her then husband wanted to start a bus travel business, but it is undisputed that they never used the bus. Audra Harrison testified that she purchased the 1984 GMC bus, which she referred to as a van or SUV, in October 2005 for trips to Virginia with her husband. She filed for divorce in November 2005.

Harrison is the only person who has used the two buses, and he did so in connection with his travel business, driving clients on casino trips and driving church groups on various trips. Harrison does not pay Audra Harrison for his use of the buses, but he pays the insurance on them. The buses were kept at the 1101 S. Texas Avenue location.

Audra Harrison did not list either bus in her 2006 divorce proceeding.

Harrison filed a lawsuit against Diesel Supply in Brazos County regarding repairs to the MCI bus, indicating in the lawsuit that he owned the bus.

Audra Harrison, although title owner of these two buses, holds them as a nominee for Harrison,

their true owner. As a result, the buses are subject to sale to satisfy Harrison's federal income tax liability.

D. Harrison's Bankruptcy

On November 30, 2004, Harrison filed bankruptcy in the Southern District of Texas, Case No. 04-46820, as a "no asset" Chapter 7 proceeding. At the time, the IRS was his largest secured creditor. Nonetheless, Harrison scheduled the IRS as an unsecured priority creditor with undisputed claims. Harrison did not schedule the IRS as a secured creditor, although he knew it had existing federal tax liens.

Harrison filed the required bankruptcy schedules and his statement of financial affairs. He did not, however, schedule any interest in the real properties at 307 N. Texas and 1101 S. Texas in Bryan, Texas, even his alleged remainder interests after the termination of Young's purported life estates. He also failed to schedule his interest in the real properties at 503 East 24th Street and 1095 E. Earl Rudder Freeway.

When Harrison filed bankruptcy, he was self-employed at A & A Auto Rentals and Sales, his car rental business, at 307 North Texas Avenue. He did not, however, disclose this business interest, his business interest in A & A Travel Agency, or any ownership interest in motor vehicles. He disclosed $5,500 in income for the tax year 2004, yet he reported $571 total income in his 2004 federal income tax return.

In his statement of financial affairs in his bankruptcy, Harrison disclosed no lawsuits, although he was a party to two lawsuits filed in Justice of the Peace courts at the time he filed bankruptcy.

On or about January 15, 2005, while he was in bankruptcy, Harrison gave the IRS a Collection Information Statement for Wage Earners and Self-Employed Individuals, signed under penalties of perjury, that included a false statement that he had never filed bankruptcy.[14]

On March 21, 2005, Harrison received a general Chapter 7 bankruptcy discharge. On March 13, 2006, the United States timely filed Adversary Proceeding No. 06-3276 against Harrison.

Harrison made false statements in his Section 341 creditors' meeting, stating that he had a common law wife and that his residence was his only property. Harrison also made numerous false statements in his bankruptcy schedules and in his statement of financial affairs in his bankruptcy case. Harrison failed to disclose in his bankruptcy certain real property in which he had an interest, as well as vehicles and buses held in Audra Harrison's name. He failed to disclose his true income and business interests in his bankruptcy. As a result of these many false statements, Harrison obtained his discharge through

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[14] Within the bankruptcy case, Harrison also did not give the IRS proper notice of the bankruptcy filing and included the wrong address for the IRS.

fraud and he failed to disclose to the Chapter 7 trustee property in which he had an ownership interest. Harrison's discharge in bankruptcy is revoked pursuant to 11 U.S.C. § 727(d).

E. Contempt Motions

The United States seeks an order holding Harrison in contempt for contacting witnesses Joann Gonzalez and Roland Searcy. It is undisputed that, after Harrison learned that the United States intended to call Gonzalez as a witness, he went to her home to discuss her testimony. The Court finds that, although Harrison told Gonzalez to "tell the truth," he instructed her regarding what she should say. Gonzalez testified that she was not afraid of Harrison, but was concerned that Harrison might try to take her house.[15] After considering all the testimony, the witnesses' demeanor, and the other evidence of record, the Court finds that Harrison's contact with Gonzalez, while highly inappropriate, did not affect Gonzalez's testimony at trial and does not rise to the level of contempt.

By Order issued January 31, 2007 [Doc. # 139], the Court ordered Harrison not to have contact with any person, other than his family members, who

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[15] Gonzalez and her husband were parties to a real estate transaction involving Harrison and his step-daughter, Sharonda Harris. The Gonzalezes made payments to Harrison, which he maintains he then gave to Sharonda Harris.

might be a witness in the case. After entry of the January 31, 2007 Order, Harrison contacted the law office of Roland Searcy asking the name of the employee who signed a cash receipt in connection with the real estate transaction involving the Gonzalezes. The receptionist gave Harrison the employee's name, but when Harrison asked to speak to the employee, the receptionist refused to transfer Harrison's call. Again the Court finds Harrison's conduct to be improper. However, Harrison's attempt to contact the employee was unsuccessful and the person he sought to contact was never listed as a witness for trial. As a result, the attempted contact did not affect the evidence at trial. The Court finds that the conduct does not rise to the level of contempt.

III. CONCLUSIONS OF LAW

The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. §§ 7402 and 7403. Venue is proper in this district pursuant to 28 U.S.C. § 1396. The Court has personal jurisdiction over Defendants, who all reside in the Southern District of Texas.

Under 26 U.S.C. § 7402(a), the United States is entitled to a final judgment in its favor against Arthur Harrison for his unpaid 1990, 1991, 1993, 1995, and 1996 income taxes, in the amount of $217,966.63, plus interest and penalties thereon from September 1, 2006 until paid.

Under 26 U.S.C. §§ 6321 and 7403(a), the federal tax liens filed against Harrison and the nominee liens against Young are valid, and the Court enforces these federal tax liens. The real properties at 307 N. Texas Avenue, 1101 S. Texas Avenue, 1095 N. Earl Rudder Freeway, and 503 East 24th Street are ordered sold to pay Harrison's income tax liability. Additionally, the assets of A & A Auto Rentals and Sales, the 1999 Cadillac Escalade, the 1987 MCI bus, and the 1984 GMC bus are ordered sold to pay Arthur Harrison's income taxes.

Under the Texas Uniform Fraudulent Transfer Act, § 24.005 of the Texas Uniform Fraudulent Transfer Act, the Court concludes that Harrison fraudulently transferred and/or concealed assets in which he has an interest that are encumbered by federal tax liens. Specifically, the real properties at 307 N. Texas, 1101 S. Texas, 1095 N. Earl Rudder Freeway, and 503 East 24th Street, the assets of A & A Auto Rentals and Sales, the 1999 Cadillac Escalade, and the 1987 MCI and 1984 GMC buses are ordered sold to pay Arthur Harrison's income taxes.

Harrison's purported transfer of a life estate in the real property at 307 N. Texas to Young was a fraudulent transfer under the Texas Uniform Fraudulent Transfer Act. Young is a nominee of Harrison, who is the true owner of the entire property.

Under 26 U.S.C. § 6321, federal tax liens attach to Harrison's interest in certain real and personal property titled to Audra Harrison and Floyd Young.

Specifically, the federal tax liens attach to the real properties at 307 N. Texas, 1101 S. Texas, 1095 N. Earl Rudder Freeway, and 503 East 24th Street, as well as to the 1999 Cadillac Escalade, the 1987 MCI bus, and the 1984 GMC bus. The federal tax liens also attach to the assets of the business operated as A & A Auto Rentals and Sales and variations of that business name.

The United States has established the requirements of 11 U.S.C. § 727(d). As a result, Harrison's Chapter 7 bankruptcy discharge is revoked due to his fraud.[16] The federal tax liens filed against Harrison survived his bankruptcy, passed through unaffected by his revoked discharge, and encumber all property in which he had an interest as of the bankruptcy petition date (November 30, 2004).

The United States is entitled to foreclose on properties subject to the federal tax liens, including Harrison's interest in the real property at 2536 Pinon Court in Bryan, Texas. The Pinon Court property shall be sold to pay a portion of Harrison's federal income taxes, and Lillie Harrison shall be compensated for her homestead interest in this property out of the net sales proceeds from the sale of the property. Mrs. Harrison's homestead interest in this property is

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[16] For the reasons stated in the Court's summary judgment ruling, the United States is entitled to a final judgment that Harrison's 1990, 1991, 1993, 1995, and 1996 federal income tax liability is non-dischargeable under 11 U.S.C. § 523(a)(1)(C), due to Harrison's willful attempts to evade or defeat his taxes.

51.138%, and Mr. Harrison's homestead interest in the property at 48.863%. These percentages will be applied after payment of expenses of sale and any unpaid *ad valorem* taxes owed to the County of Brazos.

Harrison's conduct, while inappropriate, did not rise to the level of civil contempt.

IV. CONCLUSION

Harrison is the true owner of the disputed properties, consisting of 2536 Pinon Court, 307 N. Texas Avenue, 1107 S. Texas Avenue, 503 East 24th Street, 1095 N. Earl Rudder Freeway, A & A Auto Rentals and Sales and variations of that name, a 1999 Cadillac Escalade, a 1987 MCI bus, and a 1984 GMC bus. The United States is entitled to sell this property to satisfy Harrison's outstanding federal income tax liability.

In his bankruptcy proceeding, Harrison fraudulently failed to disclose the full extent of his assets and intentionally made numerous false statements. As a result, Harrison's discharge is revoked.

The United States's contempt motions [Doc. # 138 and Doc. # 145] are **DENIED**.

The Court will issue a separate Final Judgment.

SIGNED at Houston, Texas, this 13th day of **March, 2007**.

/s/ Nancy F. Atlas
Nancy F. Atlas
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 07-20363

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ARTHUR R HARRISON; FLOYD YOUNG;
AUDRA RENEE HARRISON,

Defendants-Appellants

- -

Appeal from the United States District Court for the Southern District of Texas, Houston

- -

ON PETITIONS FOR REHEARING EN BANC

(Filed Jun 11, 2006)

(Opinion April 8, 2008, 5 Cir., ___, ___ F.3d ___)

Before STEWART, OWEN and SOUTHWICK, Circuit Judges.

PER CURIAM:

(✓) Treating the Petitions for Rehearing En Banc as Petitions for Panel Rehearing, the Petitions for Panel Rehearing are DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En

Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petitions for Rehearing En Banc are DENIED.

( ) Treating the Petitions for Rehearing En Banc as Petitions for Panel Rehearing, the Petitions for Panel Rehearing are DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petitions for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Leslie H. Southwick
United States Circuit Judge